MINUTES
of the
SIXTH MEETING
of the
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

November 2-3, 2009
State Capitol
Room 307

The sixth meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Representative Patricia A. Lundstrom, chair, at 9:30 a.m. on Monday, November 2, 2009, at the State Capitol.

Present
Rep. Patricia A. Lundstrom, Chair
Sen. Mary Kay Papen, Vice Chair
Rep. Elias Barela (11-3)
Sen. Sue Wilson Beffort
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Sen. Stephen H. Fischmann
Rep. Jane E. Powdrell-Culbert
Rep. Benjamin H. Rodefer
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Rep. James R. J. Strickler
Sen. David Ulibarri
Rep. Richard D. Vigil (11-3)

Absent
Sen. Kent L. Cravens
Sen. Tim Eichenberg
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Sen. George K. Munoz

Advisory Members
Rep. Janice E. Arnold-Jones
Rep. Jose A. Campos (11-3)
Rep. Ernest H. Chavez
Sen. Dianna J. Duran
Rep. Candy Spence Ezzell
Rep. Mary Helen Garcia
Sen. Mary Jane M. Garcia (11-2)
Rep. Thomas A. Garcia
Sen. Timothy M. Keller
Sen. Richard C. Martinez
Rep. Edward C. Sandoval
Rep. Sheryl Williams Stapleton
Rep. Thomas C. Taylor
Rep. Luciano "Lucky" Varela
Sen. Stuart Ingle

Rep. Ben Lujan
Rep. W. Ken Martinez
Rep. Andy Nunez
Sen. John M. Sapien

Guest Legislator
Sen. Rod Adair (11-2)

(Attendance dates are noted for those members not present for the entire meeting.)

Staff
Doris Faust
Sandy Mitchell
Tom Pollard

<u>Monday, November 2</u>

Call to Order

Representative Lundstrom called the meeting to order.

Statewide Economic Development Fund Update and Policy Issues

William Sisneros, executive director, and Marquita Russell, chief of programs, NMFA, discussed the Statewide Economic Development Finance Act. The law was enacted in 2003 to allow the NMFA and Economic Development Department (EDD) to partner together to help stimulate economic development in the state by providing greater access to capital in rural and underserved areas. Mr. Sisneros told the committee that amendments to the act in 2004 provided New Mexico with some of the same tools that other states have. The smart money loan participation program allows the NMFA to participate in up to 49 percent of a bank-originated loan. The NMFA share will generally not exceed $2 million. The program prioritizes businesses that create jobs and has a minimum job creation target of one job created for each $50,000 of smart money funds. One problem that the NMFA is still experiencing with the program is that the process for approval takes too long. Of the eight projects that have been approved, only four have been funded.

Ms. Russell was asked whether any of the projects the NMFA has invested in have gone sour. She said no. A committee member asked how much money still remains for new projects. Ms. Russell said there is $7 million remaining. In response to questioning, she stated that money not invested remains in the Economic Development Revolving Fund.

Stimulus Funding Authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) That Is Administered by the NMFA

John Brooks, director of commercial lending, NMFA, and Ms. Russell provided an update on the drinking water state revolving loans funded through the ARRA. The loans are used for drinking water projects by public water systems. New Mexico has received approximately $100 million in capitalization grants from the federal Environmental Protection Agency (EPA), which has been matched with $18 million by the NMFA and $2 million by the general fund. Policies for these loans are somewhat different in order to meet the mandates of the ARRA. These variations include a one percent interest rate and principal forgiveness for at least 50 percent of the loan amount.

Twenty-two ARRA drinking water projects have been identified and approved by the NMFA board, the New Mexico Office of Recovery and Reinvestment and the EPA and certified by the governor. The first of the ARRA funds is expected to be under contract in mid-November. Mr. Brooks explained the status of the "green" water projects. There are 12 green projects totaling $3,899,599. They are completing their environmental review and are currently being scheduled for loan closings. Mr. Brooks explained that green projects typically provide for either energy efficiency, water-loss prevention, water savings or green infrastructure.

The presenters provided charts showing the projects being funded, the amount of funding, the subsidy amounts and the loan component. Ms. Russell discussed the ARRA tracking and reporting requirements, which are quite extensive. She said these requirements have put a great deal of strain on the smaller water systems.

Committee members discussed the funding of projects in rural areas and whether someone at the NMFA could assist smaller entities. Mr. Brooks said the NMFA provides training to smaller communities. Representative Garcia recommended that a position be created at the state level to help smaller communities write their grant applications. The presenters were questioned about the total amount of loan forgiveness that an entity could receive. Ms. Russell said it is capped at 80 percent. The presenters were asked to explain the Davis-Bacon Wage Act and the Buy American compliance requirements under the ARRA. They were also asked to explain the consequences of projects not meeting deadlines. Ms. Russell explained that the federal money will be reallocated to other states if the projects do not meet the deadlines.

Ms. Russell was asked whether current audits are required to apply for these funds. Ms. Russell said the entities do not need current audits, but they do need to assure the NMFA of their financial competency. Representative Lundstrom recommended that the committee devote more time to a discussion on audits at a later meeting.

NMFA Conduit Bond Rules

Ms. Russell provided an overview of the bonding mechanisms available through the ARRA and reviewed the implementation of proposed rules for conduit bonding authority. The ARRA creates new categories of tax credit bonds (recovery zone economic development bonds) and tax-exempt bonds (recovery zone facility bonds). Recovery zone economic development bonds are government bonds used to finance development within a recovery zone. Recovery zone facility bonds are used to fund capital projects in recovery zones for businesses that typically would not qualify for tax-exempt financing. New Mexico was allocated $90 million for recovery zone economic development bonds and $135 million for recovery zone facility bonds. Suballocations were made to counties and large municipalities based upon the local government's job loss as a percentage of the state's aggregate job loss in 2008.

Because of the high cost of issuing tax-exempt bonds, many states are pooling recovery zone facility bonds to help share the cost of financing. Ms. Russell explained that having a statewide issuer helps facilitate the issuance of pooled bonds.

Ms. Russell provided charts showing the federal government's recovery zone allocations. Eleven of New Mexico's 33 counties did not receive a suballocation. Bonds must be issued no later than December 31, 2010. Issuers may elect to waive their allocation and allow it to be used elsewhere in the state.

Ms. Russell discussed the proposed rules for conduit bonding authority. The conduit bond program allows for the NMFA to sell tax-exempt bonds to a bank on behalf of a borrower instead of the borrower going directly to the bank. The security for the loan becomes the security for the repayment of the bonds. The proposed rules:

- define eligible entities and projects;
- set forth application procedures for financial assistance;
- set forth the basis of the application evaluation;
- define the parameters of the project financing;
- provide policies for procedures;
- set forth the parameters of the financial assistance agreement;
- provide a framework for appeals;
- allow the NMFA to charge an administrative fee; and
- direct administration of the Economic Development Revolving Fund.

Committee members discussed the need for educating banks about the programs and getting them to issue loans. Mr. Sisneros explained that lending attitudes still have not shifted. The banks are very conservative in their lending practices. He projected that it might take another three years before the situation gets better. Ms. Russell suggested that smaller entities might have better luck getting loans from small community banks. Those banks were not as hard-hit by the economic crisis and are still lending.

The presenters were asked to discuss rates and fees. The fees have not yet been determined. Ms. Russell was asked whether the fees will be less for smaller communities. She anticipated that the fees will depend on the amount financed, making it likely that fees will be less for smaller communities.

Ms. Russell was asked about how the recovery zone allocations and suballocations were determined. She told the committee that the decisions were made by the treasury department and that the state had no input. Ms. Russell was asked whether different criteria are used for economic development and facility bonds. She said the method for designating recovery zone allocations for both types of bonds was the same.

Committee members requested changes to the proposed rules. They included: a definition of "rural and underserved areas"; disclosure of vendor and supplier arrangements; more metrics in the definition of "economic development goal"; financial viability language to constrain the ability of the NMFA to disapprove a project approved by the legislature; more specific time frames in the application process; a legal history requirement for applicants; "fair-market" language for fees; criteria for determining any nonrefundable fee; and an appeal process. The authority was also asked to review for consistency the use of the terms "eligible entity" and "entities suitable for financing".

Proposed Spaceport Authority Legislation

Steve Landeene, executive director, Spaceport Authority, and Geno Zamora, general counsel, EDD, discussed the Spaceport Authority's proposed legislation. It requires passengers to be informed of the risks associated with space travel before embarking on a space flight. Passengers can sign a waiver taking on the risks. The waiver will not apply to acts of gross negligence. Space flight operators will not be required to transport passengers who do not sign the waiver. The presenters discussed the importance of informed consent legislation to help the spaceport remain competitive.

The presenters were asked whether this legislation is similar to the protection provided in other states. They said it is, although some states go further and provide for protection in cases of gross negligence. Mr. Landeene stated that the proposed legislation will provide enough benefit to keep the spaceport competitive. Committee members asked about mentally incompetent persons who sign a waiver. Ms. Faust informed the committee that a waiver will be valid only if the person who signed it has the mental capacity to contract. The presenters stated that flight operators out of their own self-interest will develop a procedure for determining the mental capacity of passengers.

Committee members discussed the proposed legislation and asked for clarification of what is meant by "requirements" in the bill. They also requested that language be added to the bill providing that the space flight operator must deliver the waiver to passengers 20 days before a flight and that passengers must return the waiver to the operator 10 days before the flight.

NMFA Proposed Legislation

Matthew Jaramillo, director of governmental affairs, NMFA, discussed the authority's proposed legislation. The legislation includes an authorization for the NMFA to make loans from the Public Project Revolving Fund (PPRF) for 46 projects across the state and one charter school, an authorization for the NMFA to make loans from the Economic Development Revolving Fund for various projects across the state and an authorization for the NMFA to make loans from the Water Project Fund and Acequia Project Fund to community water organizations, acequias, cities and counties for various water system improvements. The authority is also asking for an appropriation of $2 million from the PPRF to the Drinking Water State Revolving Loan Fund to provide state matching funds for the federal Safe Drinking Water Act of 1974 projects and to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. Mr. Jaramillo said the appropriation request may need to be increased to $2.6 million to meet federal match requirements. The authority is also seeking an amendment to the New Mexico Finance Authority Act to deal with the potential problem of projects being held up because of frivolous lawsuits. Mr. Sisneros cited the recent example in Angel Fire where that issue came up.

The presenters were asked to provide committee members with a "cheat sheet" on the projects being authorized by the legislation. Committee members asked questions about the various projects. One member suggested that if financing is provided to the Santa Fe Indian School, an agreement providing for disclosure and transparency may be a good idea. The presenters were also asked questions about loaning money to foundations and universities. Mr. Sisneros offered to expand on the line items to provide more detail on each project.

PPRF Update and Policy Issues

Steve Flance, chair, NMFA board, told the committee members that he was there to answer the committee's questions about the board and its policies. He said it is a hands-on board and the NMFA is a hands-on organization. He said that the NMFA does not hire people to place its investments. Instead, it has in-house experts, and the authority has policies for everything. It reviews investments every month and reviews benchmarks at every meeting.

Mr. Flance was asked to describe the board makeup. He said it is mostly dictated by statute, except for a few at-large members. He said there are no politics on the board and no hidden agendas. He described the committee process for reviewing a project before it gets to the board, which, he said, assures the quality of the project. Mr. Flance was asked to describe his single greatest constraint. He said part of it is funds and part is having projects that are ready to go.

Mr. Flance was asked about helping smaller communities. Mr. Flance said that 80 to 95 percent of the projects the NMFA considers are in communities with less than 10,000 people. He said a major focus of what it does is in smaller communities. Mr. Sisneros stated that the rural communities bring the NMFA business and there is no reason not to work with them. Representative Lundstrom suggested holding a work session with the NMFA to discuss rural areas. Mr. Flance was asked whether a certain amount of funds are set aside for riskier or rural projects. Mr. Flance stated that a few million dollars each year is set aside for disadvantaged funding for qualified communities at zero percent interest. The committee was provided with charts showing all the outstanding PPRF loans in each county.

Chip Pierce, partner, Western Financial Group, provided the committee with charts showing the shifts in municipal yield curves from September 2007 to October 2009. He described how the landscape for issuing bonds has changed. Five of the seven companies that sell bond insurance no longer have an investment-grade rating. Bond insurers are now very selective. This has had a big impact on local governments. In 2007, the credit spreads were tight. Since then, the credit spreads between AAA and BBB bonds have widened by multiples. Mr. Pierce explained that an issuer of $2 million in bonds does not have access to bond insurance, and if it did, it would pay two to three basis points higher than in 2007. He said this underscores the importance of the PPRF. For many issuers, it is the only game in town. Committee members discussed the relative importance of credit spreads and how they can change with the economy. One member suggested that the spreads will narrow in a few years if the economy gets stronger.

Mr. Jaramillo described the PPRF application process to the committee. A flow chart was provided showing each stage of the process, including all of the NMFA committees that review projects and the types of analysis and follow-up processes that are involved. Senator Keller suggested that time frame ranges for each of the steps would be helpful. Mr. Jaramillo was asked if every PPRF project goes through the same process. He said yes. He was asked whether entities that are not approved are given an explanation for the denial. He said the NMFA is in constant contact with an applicant, which ensures that the applicant is aware of what is going on and the reasons for a denial.

Mr. Sisneros and Todd Schroeder, IT developer, NMFA, provided a quick overview of the process for determining how the gross receipts tax (GRT) is performing, how the NMFA captures that information and what it does with the information. The NMFA has an automated system that provides quick access to the data.

The committee was provided with charts showing the number of rural projects funded by the PPRF program in fiscal years 2004 through 2009 as well as a chart showing the portion of those loans that were considered disadvantaged funding. Greg Campbell, controller, and Jerome Trojan, chief operating officer, NMFA, explained the data reflected in the charts. Mr. Campbell was asked what the "state" category on the chart indicated. He said it usually indicates building projects. Committee members discussed the ratio of money going to rural areas versus urban areas and the fairness of how the money was distributed. Mr. Flance said the NMFA is actively committed to serving rural areas. Representative Lundstrom stated that the committee may need to revisit the issue at a future meeting.

Michael Zavelle, chief of investor relations, NMFA, discussed the authority's investor relations plan. He said that when talking to rating agencies, transparency is key. The NMFA tries to get the rating agencies as much information as possible. He said the more they know about the NMFA, the more likely they are to buy its bonds.

The committee recessed at 5:20 p.m.

Tuesday, November 3

The meeting reconvened at 9:10 a.m.

Executive Session — Policy Issues

The committee met in executive session from 9:10 a.m. until 10:50 a.m.

Approval of Minutes

The minutes of the fifth meeting of the NMFA Oversight Committee were approved without objection. Representative Arnold-Jones asked whether the NMFA had provided the emergency procedures criteria she had requested at a previous meeting and was told that the NMFA had not provided them.

New Markets Tax Credit Update

Mr. Sisneros and Ms. Russell provided an update on the new markets tax credit program. It is a federal program established in 2000 to increase private capital investment in low-income areas, stimulate economic growth through job creation and provide low-income persons with jobs and services. Finance New Mexico is using its $110 million allocation to fill temporary and small permanent financing gaps and to target job-creating companies, particularly in rural areas. It is not a grant program; it fills financing gaps in order to move projects forward. Banks must provide some of the capital. Projects that have closed include SCHOTT Solar in Albuquerque and the Savoy Travel Center in Deming. Projects approved include Parq Central Hotel in Albuquerque and Pros Ranch Market in Las Cruces. The presenters provided the committee with a chart showing the allocation amounts for those projects and the jobs to be created.

Ms. Russell was asked how the NMFA determines creditworthiness. She said some of the things it looks at include the entity's business plan, who is running the business and the market risks. Ms. Russell was asked to provide a written copy of the NMFA's lending policies. She was asked whether its policies include a requirement that the money be used in communities of different sizes. She said the NMFA have a goal of dedicating 40 percent of the money to nonmetropolitan areas.

Ms. Russell was asked about the importance of job creation in deciding on a project. She said it depends on the project. She said nobody has been turned down. The approval of projects often depends on who is ready and has a commercial lender. Committee members suggested that the NMFA look for projects that create more jobs. Ms. Russell was asked to provide the number of jobs that have been created to date.

Ms. Russell was asked about the banks participating in the program. She said the only New Mexico banks participating are First National Bank of Santa Fe and Los Alamos National Bank. She said she has been talking with banks in an effort to help them understand the program. She said the reasons banks do not participate are a lack of knowledge about the program and the small size of many of the projects.

Tax Increment Development District (TIDD) Issues

Bob Hearn, president, Quality Growth Alliance, and Michael Daly, president, Mesa del Sol, discussed issues surrounding TIDDs. Mr. Hearn provided some background on the history of TIDDs. They were invented in California in 1952, and every state but Arizona now has a TIDD law of some sort. Mr. Hearn provided information on some of the unique features of TIDDs in New Mexico. TIDDs are funded at the state level (rather than locally) by GRT (rather than by property taxes) and are based on economic development and jobs (rather than redevelopment of public areas and increasing local tax revenues).

Mr. Hearn said the contribution of TIDDs in recruiting industries from out of state is hard to measure. They may provide some help by spurring new developments, but they may not be critical compared with subsidies and other benefits from the state. He said the idea that TIDDs pay for themselves does not work out. It was his recommendation that New Mexico pull back from large, private, for-profit TIDDs and concentrate on public TIDDs managed by local governments and directed toward the redevelopment of older areas that encourage infill development around existing cities.

Mr. Daly discussed his experience with Mesa del Sol. He said that he has $80 million in equity invested in the project and so far has only received $2.5 million. He said that Mesa del Sol is losing money on every commercial deal so far, but it is a long-term investment project. He requested that the legislature not change the rules on existing TIDDs. He said that in the long-term, Mesa del Sol will create more jobs in New Mexico.

Committee members discussed the issue of determining which incentives of the various ones offered by the state have paid off and staff was asked to look into it. Mr. Daly was asked about the number of parks created and the availability of public transportation in Mesa del Sol. He said Mesa del Sol has created one 10-acre commercial park and two two-acre urban parks. He said he is working with the City of Albuquerque on public transportation. Mr. Daly was asked his opinion on whether the creation of new TIDDs threatens the success of Mesa del Sol. He said he does not think competition hurts. He said that more well-developed communities will create an environment people want to come to. Mr. Daly was asked what hurdles there are in bringing companies to New Mexico. He said a few years ago, the biggest obstacle was having to go to the legislature to get incentive money. Currently, it is debt. No one is making major relocation decisions right now. Positives for New Mexico are the cost of labor and the quality of life.

Proposed Charter School Rules

Ms. Russell presented an updated version of the NMFA's proposed rules concerning charter school lease financing. She provided the committee with a copy of the proposed rules, with a chart showing the changes the committee requested at the September meeting and the pros and cons of each change. The rules as amended were approved without objection.

There being no further business, the committee adjourned at 1:10 p.m.